

Presentment Date and Time: September 30, 2019 at 10:00a.m. (Eastern Time)

Objection Deadline: September 27, 2019 at 4:00 p.m. (Eastern Time)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**STIPULATION AND ORDER BY AND AMONG BUYER AND LUAN INVESTMENT SE
CLARIFYING SQUARE FOOTAGE FOR STORE NO. 4732**

This Stipulation and Order (the “*Stipulation and Order*”) is made as of September 20, 2019, by and between Transform Holdco LLC (the “Buyer”) and Luan Investment SE (“Luan”) (the “Parties”), through their respective and duly authorized counsel of record.

Recitals

1. On October 2, 1990, Luan and Kmart Corporation (the “Debtors”) executed a *Lease Agreement* (the “*Lease Agreement*”) through which Luan leased the commercial space for Kmart Store No. 4732 at the Aguadilla Mall in Aguadilla, Puerto Rico (“Store No. 4732” or the “Demised Premises”). See *Lease Agreement*, Proof of Claims Nos. 9143 and 9215, pp. 15-46.

2. On June 20, 2017, the Debtors elected to extend the *Lease Agreement* for an additional five years, commencing January 1, 2016 to and including December 31, 2022. See Proof of Claims Nos. 9143 and 9215, pp. 47-48.

3. On October 15, 2018, the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “Petition Date”). The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

4. On February 8, 2019, the Court entered an *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief* (the “*Sale Order*”, Docket No. 2507), approving the sale of certain assets of the Debtors to the Buyer.

5. On April 19, 2019, the Buyer filed a *Notice of Assumption and Assignment of Additional*

Designatable Leases (the “*Notice of Assumption*”, Docket No. 3298) wherein Store No. 4732 was listed for assumption and assignment to “Transform Operating Stores”. The square footage for Store No. 4732 was listed as 87,368 square feet. See *Notice of Assumption*, Docket No. 329, p. 9, item 347.

6. On May 13, 2019, the Court entered an *Order (I) Authorizing Assumption and Assignment of Certain Leases and (II) Granting Related Relief* (the “*Order Authorizing Assumption*”, Docket No. 3850) through which Store No. 4732 was assumed and assigned to Transform Operating Stores LLC. See *Order Authorizing Assumption*, p. 81, item no. 517. Pursuant to Paragraph 12 of the *Order Authorizing Assumption*, Buyer or Buyer’s Assignee “shall comply with the terms of each... Designated Lease in its entirety”. *Id.* at p. 16, ¶ 12

7. The Buyer and Luan wish to clarify that, notwithstanding anything to the contrary in the *Order Authorizing Assumption*, the Buyer and Luan have agreed that the actual footage of Store No. 4732 is 87,919 square feet.¹

8. The Parties have agreed to a stipulation laying out this understanding based on the terms and conditions set forth below.

**IT IS THEREFORE AGREED, AND UPON BANKRUPTCY COURT APPROVAL
HEREOF, IT SHALL BE ORDERED AS FOLLOWS:**

9. The Parties desire to memorialize their agreement in this *Stipulation and Order*.

10. This Stipulation shall be deemed effective and in full force and effect on the date of entry of this *Stipulation and Order*.

11. This Stipulation shall supersede the *Order Authorizing Assumption* (Docket No. 3850) solely with respect to the disputed square footage of Store No. 4732. For the avoidance of doubt, and notwithstanding anything in the *Order Authorizing Assumption*, the Parties have agreed that, solely for purposes of this stipulation, the actual footage of Store No. 4732 is 87,919 square feet.

12. This *Stipulation and Order* shall inure to the benefit of and shall be binding upon the

¹ While the Buyer’s records indicate the square footage of Store No. 4732 is 87,368 square feet, at the request of Luan and solely for purposes of this stipulation and to identify the lease, the Buyer stipulates that the footage of Store No. 4732 is 87,919 square feet.

Parties, their successors and assigns.

13. This *Stipulation and Order* may be executed in one or more counterparts, which collectively shall form one and the same agreement. Any of the Parties may execute this *Stipulation and Order* by signing any such counterpart and each of such counterparts (whether an original or a copy) shall for all purposes be deemed an original.

14. Pending entry of this *Stipulation and Order* by the Bankruptcy Court, neither party shall take actions inconsistent with the provisions of this *Stipulation and Order*. In the event that this *Stipulation and Order* is not approved by the Bankruptcy Court or is not executed by the Parties, (a) nothing herein shall be used against any of the Parties hereto for any reason and (b) the obligations of the Parties under this *Stipulation and Order* shall be null and void, and with the exception of this paragraph, the Parties' respective rights and obligations under applicable law shall remain unaffected by this *Stipulation and Order*.

15. The Bankruptcy Court shall have jurisdiction over any action or proceeding arising out of, or relating to, this *Stipulation and Order*.

[Signatures on next page]

Dated: September 20, 2019

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Counsel for Luan Investment SE

IT IS SO ORDERED.

Dated: September 30, 2019
White Plains, New York

Dated: September 20, 2019

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HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE